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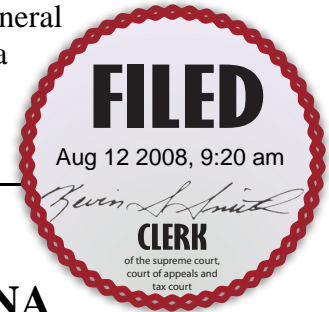
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**IN THE
COURT OF APPEALS OF INDIANA**

MAREESE S. BOYD,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 33A04-0804-CR-243

APPEAL FROM THE HENRY CIRCUIT COURT
The Honorable Mary G. Willis, Judge
Cause No. 33C01-0606-MR-1

August 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Mareese S. Boyd challenges his sixty-year sentence imposed following his plea of guilty but mentally ill to murder and class A felony conspiracy to commit robbery. We affirm.

Issues

We restate the issues as follows:

- I. Whether the trial court abused its discretion when it failed to give significant mitigating weight to Boyd's guilty plea and mental illness; and
- II. Whether Boyd's sentence was appropriate in light of the nature of the offenses and his character.

Facts and Procedural History

The facts most favorable to the trial court's judgment indicate that on June 1, 2006, Boyd and a fellow inmate at the New Castle Correctional Facility entered the cell of Roger Hewitt, located in the facility's psychiatric ward. After making several unsuccessful attempts to block the security camera, Boyd and his accomplice choked Hewitt to death, placed his body on his bed, and covered him with a blanket. The men then exited and entered the cell several times, taking Hewitt's property with each trip. On June 20, 2006, the State charged Boyd with murder, class A felony conspiracy to commit murder, class A felony conspiracy to commit robbery, and class A felony robbery resulting in serious bodily injury. On August 8, 2006, the State alleged that Boyd was a habitual offender.

On November 13, 2006, the parties stipulated to a finding that Boyd was not competent to stand trial and agreed with the recommendation of the court-appointed

psychiatrist that he be committed to the Division of Mental Health for competency restoration services. On December 29, 2006, after Boyd spent time at the Logansport State Hospital, staff officials filed an evaluation report with the court declaring him competent to stand trial.

On the day of trial, December 3, 2007, Boyd entered into a plea agreement in which he agreed to plead guilty but mentally ill to murder and class A felony conspiracy to commit robbery, and the State agreed to dismiss the remaining charges and not pursue the habitual offender enhancement. The trial court accepted the plea agreement and sentenced Boyd to concurrent terms of sixty years for murder and forty-five years for conspiracy to commit robbery. The trial court found Boyd's guilty plea and history of mental illness as mitigating factors and his extensive criminal history and the fact the victim was mentally infirm as aggravating factors. This appeal ensued.

Discussion and Decision

I. Abuse of Discretion

Boyd contends that the trial court erred in imposing a sixty-year sentence, which is five years more than the advisory sentence for murder. *See* Ind. Code § 35-50-2-3 (establishing sentencing range of forty-five to sixty-five years for murder, with advisory sentence of fifty-five years). Specifically, Boyd contends that the trial court failed to give his guilty plea and history of mental illness significant mitigating weight. So long as a sentence is within the statutory range, a sentencing decision is subject to review on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. An abuse of discretion occurs if the decision is "clearly against the logic

and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Id.* (citations and quotation marks omitted).

To the extent Boyd contends that the trial court did not properly weigh his guilty plea and mental illness, we note that such is not subject to review for abuse of discretion. *See id.* at 491 (“Because the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.”). As such, we find no abuse of discretion.

II. Appropriateness

Boyd maintains that his sentence is inappropriate. Pursuant to Indiana Appellate Rule 7(B), this Court may “revise a sentence authorized by statute if after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” A defendant must persuade the appellate court that his sentence has met the inappropriateness standard of review. *Anglemyer*, 868 N.E.2d at 494.

Initially, we note that although Boyd contends that his sentence is inappropriate, he has failed to set forth any argument supported by cogent reasoning or citation to authority and therefore has waived this claim. *See* Ind. Appellate Rule 46(A)(8)(a); *Boyd v. State*, 866 N.E.2d 855, 857 (Ind. Ct. App. 2007), *trans. denied*. Waiver notwithstanding, we address the merits of the claim.

As to the nature of the offense, the evidence shows that Boyd entered the cell of a mentally infirm inmate in the prison's psychiatric ward and brutally choked him to death with his bare hands for no apparent reason other than to steal his property.

As for his character, Boyd contends that he accepted responsibility for his actions by pleading guilty. Although our supreme court has consistently held that a defendant's guilty plea must be given consideration in sentencing determinations, it has also held that a guilty plea lacks significance where the defendant receives a substantial benefit from the plea. *McElroy v. State*, 865 N.E.2d 584, 591-92 (Ind. 2007). Also, a defendant's plea loses its significance if it was "more likely the result of pragmatism than acceptance of responsibility and remorse." *Davies v. State*, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001). Here, Boyd received a substantial benefit from the guilty plea, in exchange for which the State dismissed two class A felony charges and agreed not to seek the habitual offender enhancement. Further, Boyd pled guilty on the day of trial, and evidence of his guilt appeared overwhelming. Finally, the presentence investigation report indicates that Boyd has a lengthy history of criminal or delinquent activity, which spans two decades. Boyd has seven prior felony convictions, which include battery and armed robbery.

Regarding his mental illness, Boyd has failed to establish that he was unable to control his behavior, that there were limitations on his ability to function, or that there was a nexus between his mental condition and the crime. *See Williams v. State*, 840 N.E.2d 433, 439 (Ind. Ct. App. 2006) (listing mitigating considerations of mental illness). In sum, we conclude that Boyd's sentence is appropriate.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.